

Appeal No. VA88/0/228

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Kayfoam Woolfson Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices, factory, stores and yard at Bluebell Industrial Estate, Clondalkin, Co. Dublin

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF NOVEMBER, 1988

By notice of appeal dated 25th August, 1988, the appellants appealed against the Commissioners assessment of rateable valuation £1710 on the above described hereditaments.

Mr Alan McMillan ARICS of Donal O'Buachalla & Co Ltd of 85 Merrion Square South, Dublin 2, made a written submission dated 14th October 1988 and Mr Patrick Berkery, who is a Bachelor of Commerce, has 12 years experience as a valuer in the Valuation Office made a written submission dated 11th October, 1988.

At the oral hearing on the 17th October Mr McMillan accompanied by certain of his colleagues represented the appellants and Mr Berkery appeared to advance his submissions.

In the result, the Tribunal pressed to deal with a very net question of whether a building which was not completed on the 1st November, 1987 (the statutory date for the publication of the 1987 annual revision; cf Local Financial Year (Adaptation) Order, 1984 (S.I. No. 265 of 1984)) should be regarded as liable for rates once it was beneficially occupied from the start of the year, viz 1st January 1988.

The valuation history of the premises is as follows:-

It was first valued during the 1973 Annual Revision when the R.V. was fixed at £1,050. At 1973 first appeal stage the valuation was reduced to R.V. £1,000 and was further reduced to R.V. £930 at 1973 Circuit Court stage. During the 1975 Annual Revision the R.V. was increased to R.V. £1,200 when a new warehouse was valued. At 1975 first appeal stage the R.V. was reduced to £1,180. In 1976 Annual Revision, account was taken of a building which was burned down and the R.V. was reduced from £1,180 to £1,155. In 1979 an extension was valued and the R.V. was increased to £1,335.00.

In 1987 the property was listed by Dublin Co. Council to value an extension. A valuer from the Valuation Office visited the factory in the annual revision which took place in the period from 7/9/87 to 14/10/87. As the extension was in progress, he made no change to the valuation.

At the 1987 first appeal stage Dublin Co. Council appealed against the failure of the Commissioner to value the extension. Mr Berkery was appointed by the Commissioner to examine the grounds of appeal and report back. During his visit he ascertained that the extension

had been completed towards the end of 1987 and proposed that the rateable valuation be increased from £1,335 to £1,710.

Later there was "quantum" agreement so that the R.V. was reduced to £1,685.

The facts agreed between the parties were as follows:-

- (a) Revised Valuation: £1,710 - subject to this Appeal.
- (b) That only one building was not completed, remaining in Contractor's hands at 1st November 1987.
- (c) A fair R.V. on the said building would be £285.

The Tribunal would emphasise that this was a new building which had not been previously occupied and, therefore, it was not like a case where the owner had been in occupation and left contractors in to do some repairs so that their occupation was only temporary.

This was the situation in a case relied upon by both parties: Harper Stores Limited v Commissioner of Valuation (1968) I.R. 166. In that case the relevant statutory date was the 1st of March and at that date contractors were in occupation of the premises and, therefore, it was contended on behalf of the appellants in that case that the contractors had taken over and that the appellants were unable to trade and that in these circumstances it was not possible for the Commissioner, if he was to comply with the statutory requirements, to assess any valuation on the premises as they were then. However, the High Court (Mr Justice Henchy) held that the appellants were out of the premises for some ten weeks while the contractors were carrying out the reconstruction. It clearly could not be held that, during that short period, the contractors were

in rateable occupation. Thus, either the premises during that time were in the rateable occupation of the appellants or they must be held to be vacant premises and not rateable. Mr Justice Henchy went on to say, p. 173 of the report:-

"This case is far removed from that of a new house which is sought to be valued for rating before it is completed. (Emphasis added)."

The Judge went on to say that the ten weeks in question involved in the case amounted not to a sundering of the appellants' rateable occupation but to a mere variation of the mode of their continuous use of the premises for the purposes of their business of ladies' drapery.

The appellants in that case argued, too, that since the Commissioner was bound to value the premises before the 1st of March in its "actual state", it could not take into account its condition when the reconstruction would be completed after the 1st of March. The learned Judge did not accept this as a correct statement of the limitation of the Commissioner's functions. He must of course, make the valuation on the premises in their "actual state", since "actual state" connotes the premises as it stands with all its potentialities and disabilities, he may, in order to achieve a correct assessment, have to look at past, present, and future.

He went on, once again, to distinguish that case from that of an unfinished new house which has as yet no rateable occupier, and has no real "actual state" as a house. In such a case, the Commissioner cannot make a valuation on the basis that the house will soon be finished and beneficially occupied. The position is different when the premises are beneficially occupied. The Tribunal has reached the conclusion that the correct analogy is with the "unfinished house" referred to in that judgement and, perhaps, a misunderstanding of what was meant by "actual state" gave rise to some confusion on the part of the County Council in this case which led them to appeal the Commissioner's original verdict.

In the circumstances, the Tribunal is satisfied that the rateable valuation of the premises should be £1,400 and not £1,685.